



**U.S. Citizenship  
and Immigration  
Services**

**Non-Precedent Decision of the  
Administrative Appeals Office**

In Re: 13904102

Date: MAR. 3, 2021

Appeal of Texas Service Center Decision

Form I-140, Immigrant Petition for Alien Worker (Extraordinary Ability)

The Petitioner, a director of photography, seeks classification as an individual of extraordinary ability. *See* Immigration and Nationality Act (the Act) section 203(b)(1)(A), 8 U.S.C. § 1153(b)(1)(A). This first preference classification makes immigrant visas available to those who can demonstrate their extraordinary ability through sustained national or international acclaim and whose achievements have been recognized in their field through extensive documentation.

The Director of the Texas Service Center denied the petition, concluding that although the Petitioner established that he satisfies the initial evidentiary requirements for this classification, he did not establish, as required, that he has sustained national or international acclaim and that he has risen to the very top of his field. The matter is now before us on appeal.

In these proceedings, it is the Petitioner's burden to establish eligibility for the requested benefit. *See* Section 291 of the Act, 8 U.S.C. § 1361. Upon *de novo* review we will withdraw the Director's decision and remand the matter for the entry of a new decision consistent with the following analysis.

**I. LAW**

Section 203(b)(1) of the Act makes visas available to immigrants with extraordinary ability if:

- (i) the alien has extraordinary ability in the sciences, arts, education, business, or athletics which has been demonstrated by sustained national or international acclaim and whose achievements have been recognized in the field through extensive documentation,
- (ii) the alien seeks to enter the United States to continue work in the area of extraordinary ability, and
- (iii) the alien's entry into the United States will substantially benefit prospectively the United States.

The term "extraordinary ability" refers only to those individuals in "that small percentage who have risen to the very top of the field of endeavor." 8 C.F.R. § 204.5(h)(2). The implementing regulation

at 8 C.F.R. § 204.5(h)(3) sets forth a multi-part analysis. First, a petitioner can demonstrate international recognition of their achievements in the field through a one-time achievement (that is, a major, internationally recognized award). If the petitioner does not submit this evidence, then they must provide sufficient qualifying documentation that they meet at least three of the ten criteria listed at 8 C.F.R. § 204.5(h)(3)(i) – (x) (including items such as awards, published material in certain media, and scholarly articles).

Where a petitioner establishes that they meet these initial evidence requirements, we then consider the totality of the material provided in a final merits determination and assess whether the record shows sustained national or international acclaim and demonstrates that the individual is among the small percentage at the very top of the field of endeavor. *See Kazarian v. USCIS*, 596 F.3d 1115 (9th Cir. 2010) (discussing a two-part review where the documentation is first counted and then, if fulfilling the required number of criteria, considered in the context of a final merits determination); *see also Visinscaia v. Beers*, 4 F. Supp. 3d 126, 131-32 (D.D.C. 2013); *Rijal v. USCIS*, 772 F. Supp. 2d 1339 (W.D. Wash. 2011).

## II. ANALYSIS

The record reflects that the Petitioner works in the film and television industry as a director of photography. He is the founder of [REDACTED] a Florida-based production company.

As the Petitioner has not indicated or established that he has received a major, internationally recognized award, he must demonstrate that he meets the initial evidence requirements by satisfying at least three of the ten criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x). The Petitioner claimed that he could meet six of these criteria, and the Director determined that he met four of them. Specifically, the Director concluded that the Petitioner satisfied the criteria related to memberships in associations that require outstanding achievements, published materials in major media, judging the work of others in his field, and display of his work in artistic exhibitions or showcases. *See* 8 C.F.R. § 204.5(h)(3)(ii), (iii), (vi) and (vii).

The Director determined that the Petitioner claimed, but did not establish, that he meets the criteria related to lesser nationally or internationally recognized awards and leading or critical roles with organizations that have a distinguished reputation. *See* 8 C.F.R. § 204.5(h)(3)(i) and (viii).

Because the Petitioner demonstrated that he met the initial evidence requirements, the Director proceeded to a final merits determination. In a final merits determination, the Director must analyze all of a petitioner's accomplishments and weigh the totality of the evidence to determine if their successes are sufficient to demonstrate that they have extraordinary ability in the field of endeavor. *See* section 203(b)(1)(A)(i) of the Act; 8 C.F.R. § 204.5(h)(2) and (3); *see also Kazarian*, 596 F.3d at 1119-20.<sup>1</sup>

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<sup>1</sup> *See also* USCIS Policy Memorandum PM 602-0005.1, Evaluation of Evidence Submitted with Certain Form I-140 Petitions; Revisions to the Adjudicator's Field Manual (AFM) Chapter 22.2, AFM Update AD11-14 4 (Dec. 22, 2010), <https://www.uscis.gov/policymanual/HTML/PolicyManual.html>.

On appeal, the Petitioner asserts that the Director's decision reflects that he did not consider all the evidence together in its totality in determining whether he is eligible for the benefit sought. We agree with that assertion as the final merits analysis section of the decision is limited to two very brief paragraphs and contains few references to the submitted evidence. For example, although the Director determined that the Petitioner satisfied the membership, published material and judging criteria at 8 C.F.R. § 204.5(h)(3)(ii), (iii), and (vi), no evidence related to these three criteria is mentioned or weighed in the final merits discussion or elsewhere in the decision. He simply observes that the criteria have been met. In weighing the evidence submitted in support of the display criterion, the Director refers to the Petitioner's submission of "copies of festival passes," but does not reference other relevant evidence in the record pertaining to the display of the Petitioner's work.

In addition to not fully weighing the evidence submitted in support of these four criteria, the Director's final merits discussion disregarded evidence that the Petitioner had provided in support of two additional criteria, as well as evidence he had submitted in support of his claim that he enjoys sustained national and international acclaim as a cinematographer/director of photography. Such evidence included multiple expert opinion letters and media coverage related to awards he received. Because the Director did not consider any of this evidence in the final merits analysis, the decision did not sufficiently address why the Petitioner has not demonstrated that he is an individual of extraordinary ability under section 203(b)(1)(A) of the Act.

An officer must fully explain the reasons for denying a visa petition in order to allow a petitioner a fair opportunity to contest the decision and to allow us an opportunity for meaningful appellate review. *See* 8 C.F.R. § 103.3(a)(1)(i); *see also Matter of M-P-*, 20 I&N Dec. 786 (BIA 1994) (finding that a decision must fully explain the reasons for denying a motion to allow the respondent a meaningful opportunity to challenge the determination on appeal). Here, the Director did not adequately explain the reasons for denial of the petition.

Based on the deficiencies discussed, we will withdraw the Director's decision and remand the matter for further review and entry of a new decision. As the Director already determined that the Petitioner satisfied at least three criteria, the new decision should include an analysis of the totality of the record, including additional evidence the Petitioner has provided on appeal. The Director should evaluate whether the Petitioner has demonstrated, by a preponderance of the evidence, his sustained national or international acclaim and whether the record demonstrates that he is one of the small percentage at the very top of the field of endeavor, and that his achievements have been recognized in the field through extensive documentation. *See* section 203(b)(1)(A)(i) of the Act; 8 C.F.R. § 204.5(h)(2), (3); *see also Kazarian*, 596 F.3d at 1119-20.

**ORDER:** The decision of the Director is withdrawn. The matter is remanded for the entry of a new decision consistent with the foregoing analysis.